IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.83 OF 2004

Shri Nemichand Manikchand Jain ...Petitioner

Versus

Shri Vajranarayan Ramayya Bhairy & Ors. ...Respondents

Mr.B.K.Raje for petitioner

Mr.S.D.Thokade for respndent no.1

CORAM : P.V.KAKADE, J.

DATE : 30TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner has filed this petition against the judgment and order passed by Addl. District Judge, Thane dated 26.9.2003 rejecting delay condonation application in Misc.Application No.208 of 2001.

. The said application was filed by the original defendant no.1 in R.C.S.No.353 of 1999 filed in the Court of Civil Judge, Junior Division,Bhiwandi. The said application was filed under Section 5 of the Limitation Act for the condonation of delay for filing the appeal against the judgment and decree in the said suit dated 22.3.2001. The said suit was filed by respondent no.1 original plaintiff as landlord for eviction and arrears of rent. The original defendant no.2 is a party in the present application and also in the suit and appeal as a sub-tenant of the defendant no.1.

3. The delay condonation application was filed on two grounds namely that the present petitioner was unable to attend the court matter due to the fact that he had to rush to Rajastan to look after his ailing father, secondly it was averred that he had engaged an advocate to represent his case but despite the assurance the advocate did not inform him about the progress of the case and because of that the suit has been decreed ex-parte.

4. Both the grounds appear to have not found favour with the labour court. So far as ground of illness of his

father in Rajastan is concerned, the medical certificate which was produced on record could not be believed and accepted as genuine mainly due to reason that it was not dated at all and therefore, it created genuine apprehension about its authenticity.

5. So far as alleged apathy on the part of the advocate is concerned, the lower appellate court observed that there was no convincing evidence is adduced in support of such ground. Moreover, till December, 2000 there was sufficient time for Petitioner to contest the suit by filing his written statement, however, it was not done and no explanation coming forward for that aspect.

6. It is also pointed out by the advocate for the respondent that a separate suit is filed by the present petitioner for declaration that ex-parte decree is bad in law, which is pending.

7. Under the circumstances, I do not see any merits in the petition and confirm the order passed by the lower appellate court. In the result the Petition stands dismissed with no order as to costs.